

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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IN RE WORLD TRADE CENTER DISASTER	:	<b><u>ORDER DENYING FEDERAL</u></b>
SITE LITIGATION	:	<b><u>RULE 41(a)(1) MOTIONS OF</u></b>
-----	:	<b><u>VOLUNTARY DISMISSAL</u></b>
IN RE LOWER MANHATTAN DISASTER	:	
SITE LITIGATION	:	21 MC 100 (AKH)
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IN RE COMBINED WORLD TRADE CENTER	:	21 MC 103
AND LOWER MANHATTAN DISASTER SITE	:	
LITIGATION	:	
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ALVIN K. HELLERSTEIN, U.S.D.J.:		

In the past week, I have received a series of Federal Rule of Civil Procedure 41(a)(1) stipulations of voluntary dismissal in cases docketed in the above-captioned Master Calendars. The parties to these stipulations have sought Court approval for the dismissals. The proposed stipulations are deficient and cannot accomplish their purpose. I therefore deny approval at this time, without prejudice to renewal.

Federal Rule of Civil Procedure 41(a)(1) states in relevant part, "Subject to Rules 23(e), 23.1(c), 23.2, and 66 and any applicable federal statute, the plaintiff may dismiss an action without a court order by filing: (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or (ii) a stipulation of dismissal signed by all parties who have appeared." The stipulations at issue fail to comply with this rule.

The first set of stipulations, submitted by the Hofmann & Schweitzer firm, are designated "Rule 41(a)" dismissals. However, the stipulations do not comply with Rule 41(a)(1), the applicable rule. The stipulations do not state whether the opposing parties have answered or moved for summary judgment, and do not state whether they are dismissing all parties whom the relevant Plaintiffs sued, or only some parties.

The second set of stipulations, submitted by the Sullivan Papain firm and the Gregory J. Cannata firm, state that they are Federal Rule 41(a)(1)(ii) dismissals, but are similarly deficient.


Plaintiffs are given leave to seek voluntary dismissal by motion, if fewer than all Defendants are to be dismissed, or by stipulation either if all Defendants are to be dismissed or if Defendants in a given case have not answered or moved for summary judgment. See Fed. R. Civ. P. 41(a).

For the Parties' ease of reference, the rejected stipulations are attached to this Order.

SO ORDERED.

Dated:

January 3, 2011  
New York, New York

  
ALVIN K. HELLERSTEIN  
United States District Judge